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EXAMINER

REYES, REGINALD R

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/681,954
Filing Date: October 08, 2003
Appellant(s): KALIES, RALPH F.

Louis C. Jujmich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 1, 2010 appealing from the Office action mailed July 6, 2010.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

7346655	Donoho	03-2008
6463417	Schoenberg	10-2002

6609115

Mehring

08-2003

(9) Grounds of Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1-9, 15-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Donoho et al (U.S. 7,346,655) in view of Schoenberg (U.S. 6,463,417) and Mehring et al (U.S. 6,609,115).
2. With respect to claim 1, Donoho teaches a method for storing and reporting pharmacy data, comprising the steps of: generating by a plurality of pharmacies (see for example Donoho column 53 lines 4-6 and column 92 lines 25-39), each of the pharmacies operating within a managed care organization, electronic pharmacy data comprising medical, financial and transactional information related to pharmaceutical transactions (see for example Donoho column 53 lines 4-6 and column 92 lines 25-39). Donoho teaches providing the report to the requestor (see for example Donoho column 53 lines 5-6 and column 53 lines 17-20). Donoho teaches receiving over a network, by a processing center of the managed care organization, a data transfer request to

transfer respective electronic pharmacy data from at least one of the plurality of pharmacies (see for example Donoho column 53 lines 4-6 and column 92 lines 25-39).

Donoho does not teach providing first access security by the processing center in response to the data transfer request, wherein the first access security includes checking credentials defined by the processing center and submitted for authorization by the at least one pharmacy; providing second access security by the processing center in case the at least one pharmacy passes the first access security, wherein the second access security includes, prior to accepting the respective electronic pharmacy data by the processing center, checking whether the respective electronic pharmacy data meet at least one predefined validity requirement defined by the processing center; receiving, by the processing center, a transfer of the respective electronic pharmacy data pursuant to compliance with the second access security ; processing, organizing and structuring the electronic pharmacy data by the processing center to format the electronic pharmacy data in accordance with at least one of a predetermined protocol and format; storing the processed electronic pharmacy data in a data warehouse; storing subsets of the processed electronic pharmacy data in a data mart, the subsets being adapted to meet specific demands of particular requestors in terms of analysis, content, presentation and format, by storing a portion of a larger set of data residing in the data warehouse thereby to allow preparation of predetermined sets of reports pertinent to the particular requestors; receiving by the processing center a data request from a data requestor to obtain at least a portion of the processed electronic pharmacy data, the data requestor having a privilege level identifying the type of data available to

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the requestor; providing third access security by the processing center in response to the data request, wherein the third access security includes checking credentials defined by the processing center and submitted for authorization by the data requestor; providing fourth access security by the processing center in case the data requestor passes the third access security, wherein the fourth access security includes checking whether requested electronic pharmacy data is consistent with the scope of the privilege level of the data requestor; formatting the portion of the electronic pharmacy data requested by the data requestor into a report pursuant to compliance with the fourth access security, the portion of the electronic pharmacy data for the report being developed from the data in the data warehouse or the subsets of the data in the data mart.

Schoenberg teaches storing at a datastore/data warehouse the health data and associated access priority data and receiving from a requester (see for example Schoenberg column 2 lines 40-62). Schoenberg teaches further a schematic diagram of a patient's medical record in accordance to the security access codes generated by the patient (formatting data). The security access codes that are easily ascertained are assigned to low security categories and security access codes that are more difficult to ascertain are assigned that high security categories (see for example Schoenberg column 2 lines 40-62 and column 6 lines 26-64 and Fig. 3). With respect to the "subsets being adapted to....." it is obvious to substitute one type of data with another as long as the method is performed.

Mehring teaches a method step of sorting data into restricted and unrestricted data where the data is sorted into multiple levels of restricted data, with each requiring another security level to access (see for example Mehring column 14 lines 64-67 and column 15 lines 1-16). One of ordinary skill in the art at the time of invention would have found it obvious to combine the method of storing and reporting pharmacy data as taught by Donoho with the secured data access taught by Schoenberg with the multiple levels of restricted data as taught by Mehring with the motivation to distribute medical information in which the medical care provider or pharmacy has quick access to a patient's medical record, but only to the information within the medical record that is needed by the user (medical professional, doctor, nurse) for the proper treatment of the patient at the time.

3. Referring to Claim 2, Donoho in view of Schoenberg and Mehring teaches the method of claim 1, further comprising the steps of: encrypting by the respective plurality of pharmacies the pharmacy data before transferring the electronic pharmacy data to the processing center (see for example Donoho column 53 lines 55-58); decrypting the electronic pharmacy data by the processing center after obtaining it the electronic pharmacy data is received (see for example Donoho column 53 lines 61-62).

4. Referring to Claim 3, Donoho in view of Schoenberg and Mehring teaches the method of claim 1 wherein the electronic pharmacy data are obtained by means of

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received via an electronic communications network (see for example Donoho column 57 lines 46-47).

5. Referring to Claim 4, Donoho in view of Schoenberg and Mehring teaches the method of claim 3 wherein the requestor requests and receives the report by means of an electronic communications network (see for example Donoho column 14 lines 15-21 and Fig. 21).

6. Referring to Claim 5, Donoho in view of Schoenberg and Mehring teaches the method of claim 4 wherein the electronic communications network is an intranet (see for example Donoho column 8 lines 2-9).

7. Referring to Claim 6, Donoho in view of Schoenberg and Mehring teaches the method of claim 4 wherein the electronic communications network is the internet (see for example Donoho column 8 lines 2-9).

8. Referring to Claim 7, Donoho in view of Schoenberg and Mehring teaches the method of claim 1, wherein the requestor is selectively allowed access to a greater or lesser portion of the electronic pharmacy data based upon predetermined criteria (see for example Donoho column 18 lines 23-39).

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9. Referring to Claim 8, Donoho in view of Schoenberg and Mehring teaches the method of claim 1, further comprising the step of checking by the processing center the electronic pharmacy data for defects before storing it (see for example Donoho column 42 lines 27-35).

10. Referring to Claim 9, Donoho in view of Schoenberg and Mehring teaches the method of claim 1, further comprising the step of encrypting the report by the processing center before sending it to the requestor (see for example Donoho column 19 lines 66-67 and column 20 lines 1-6).

11. Referring to Claim 15, Donoho in view of Schoenberg and Mehring teaches the method of claim 1, wherein the report represents financial performance by an individual pharmacy, financial performance by a plurality of pharmacies, or a medication review (see for example Donoho column 53 lines 5-6 and column 53 lines 17-20).

12. Referring to Claim 16 Donoho in view of Schoenberg and Mehring teaches the method of claim 1, wherein the processing center formats the electronic pharmacy data or the report to comply with HIPAA (see for example Donoho column 53 lines 5-6 and column 53 lines 17-20).

(10) Response to Argument

A) Appellant argues that the prior art does not teach the prior art does not teach that the pharmacy data is generated by a pharmacy and is received at the processing center first after first and second access security checks. The first access security check determines that the pharmacy has proper credential and the second access security check determines if the data itself meets the predefined validity requirement defined by the processing center. Examiner respectfully disagrees. First the main reference Donoho is a method for storing and reporting pharmacy data as shown on column 53 lines 4-6 and column 92 lines 25-39. Second Schoenberg teaches the first access and second access security check. Schoenberg in column 5 lines 66-67 and column 6 lines 1-13, teaches the identification information input by the requester could also be the security access codes set up by the patient. If the identification information input by the requester does not define a unique patient in the database, the server system notifies the requester that more identification information is needed to establish a unique patient match, step 218. If the identification information provided by the requester provides a unique patient match (first security check), step 216, the server system prompts the requester to enter security access codes for the patient. The server system then receives one or more of the security access codes input to the server system by the requester, step 219. The server system 120 determines whether the received security access codes (reads on data itself) satisfy the requester identification constraints, step 220 (second security check). It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to combine the teachings of Donoho, Schoenberg and Mehring. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

B) Appellant argues that the prior art does not teach the "transfer in" or receiving information. Examiner respectfully disagrees. Donoho in column 42 lines 19-21, teaches an advisory may be obtained by file transfer from another machine, where said transfer uses an application other than the advice reader. For example, a user might direct a Web browser to download an advisory file that is pointed to by a hypertext link. Or, an application might direct the downloading of an advisory, without user control, using FTP or some file sharing protocol. The downloading of advisory file from one machine to another is a "transfer in" for the machine downloading the file. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Donoho, Schoenberg and Mehring. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

C) Appellant argues further that the prior art does not teach data transfer request to transfer. Examiner respectfully disagrees. Schoenberg teaches a method for distributing medical information (transferring of data) for an individual over a communications network that includes steps of generating a plurality of security access codes, generating a plurality of hierarchical categories, ranging from a low security category to high security category, categorizing the individual's medical information into privacy levels ranging from a least private level to a most private level, inputting the individual's categorized medical information into the plurality of hierarchical categories, the least private level being input into the low security category and the most private level being input into the high security category and assigning, to each of the categories, one or more of the access security codes, such that the medical information in each category will be released only if the assigned access security codes are received. The method further includes the steps of receiving, from a requester, one or more of the access security codes over the communications network, determining whether the received access security codes match one or more of the assigned access security codes and transmitting, to the requestor over the communications network, the medical information in the categories in which the received security access codes match the assigned security access codes , as it is described in column 2 lines 63-67 and column 3 lines 1-19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Donoho, Schoenberg and Mehring. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function

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as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/REGINALD REYES/

/C. Luke Gilligan/

Primary Examiner, Art Unit 3626

Conferees:

/C.L. G./

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